



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

APR 30 2008

AE-17J

Certified Mail
Return Receipt Requested

Michelle A. Gale
Dykema Gossett PLLC
10 South Wacker Drive
Suite 2300
Chicago, Illinois 60606

Re: TES Filer City Station
Filer City, Michigan

Dear Ms. Gale:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves *In the matter of TES Filer City Station LP*, Docket No. CAA-05-2008-0016.
As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on APR 30 2008.

Pursuant to paragraph 29 of the CAFO, TES Filer City Station LP must pay the civil penalty within 30 days of APR 30 2008. Your check must display the case name (*In the matter of TES Filer City Station LP*), the docket number, CAA-05-2008-0016, and the billing document number, 2750803A016.

Please direct any questions regarding this case to Eaton Weiler, Associate Regional Counsel, (312) 886-6041.

Sincerely yours,

Bonnie Bush, Chief
Air Enforcement & Compliance Assurance Branch (MI/WI Section)

Enclosure

cc: Janis Denman, District Supervisor, Cadillac District, MDEQ
Tom Hess, Enforcement Unit Supervisor, MDEQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

TES Filer City Station LP
Filer City, Michigan,

Respondent.

) Docket No. CAA-05-2008-0016
)

) Proceeding to Assess a Civil Penalty
) Under Section 113(d) of the Clean Air
) Act, 42 U.S.C. § 7413(d)
)

2008 APR 30 PM 2:08

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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency, Region 5.

3. Respondent is TES Filer City Station LP (TES), a partnership doing business in the State of Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil

penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in the CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Title V of the Act, 42 U.S.C. §§ 7661a-7661f, establishes an operating permit program for specified sources, including "major sources." Under Section 502(b) of the Act, 42 U.S.C. § 7661a(b), EPA promulgated regulations implementing Title V of the Act. *57 Fed. Reg.* 32295 (July 21, 1992). These regulations are codified at 40 C.F.R. Part 70.

10. The term "major source" means, in relevant part, any stationary source which directly emits or has the potential to emit 100 tons per year of any air pollutant. Section 501(2) of the Act, 42 U.S.C. § 7661(2); 40 C.F.R. § 70.2.

11. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. §§ 70.1(b) and 70.3(a) provide that, after the effective date of any permit program approved or promulgated under Title V of Act, no person may operate a "major source" except in compliance with a Title V operating permit.

12. On December 4, 2001, EPA granted full approval to the Michigan Title V operating permit program, effective on November 30, 2001. *66 Fed. Reg.* 62949 (December 4, 2001).

13. The Michigan Department of Environmental Quality issued Title V operating permit No. 199600181 (Title V permit) to TES, effective September 9, 2002.

14. The Title V permit provides that the charge rate of petroleum coke in each boiler

(EUBOILER01 and EUBOILER02) shall not exceed 130,800 pounds per steam generating unit (petroleum coke charge rate limit). Condition II.5 of Table F-1.1 (FGBOILERS).

15. The Title V permit provides that TES shall observe and make a record of the observation of the visible emissions (VE) from the lime-handling baghouse stack at least once each time the silo is being filled. Conditions III.B.2 and III.B.3 of Table E-1.1 (EULIMESTORAGE).

16. The Title V permit provides that TES shall observe and make a record of the observation of the VE from the ash-unloading baghouse stack at least once each day that the ash-unloading system is operating. Conditions III.B.2 and III.B.3 of Table E-1.2 (EUASHUNLOAD).

17. The Title V permit provides that TES shall observe and make a record of the observation of the VE from the wood-handling baghouse stack at least once each day that the wood-handling system is operating. Conditions III.B.2 and III.B.3 of Table F-1.2 (FGFUELSTORAGE).

18. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for CAA violations that occurred from January 31, 1997, through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for CAA violations that occurred after March 15, 2004. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

19. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an

administrative penalty action.

20. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

21. Respondent is a person within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

22. Respondent owns and operates a 60 megawatt cogeneration facility with two spreader stoker boilers at 700 Mee Street, Filer City, Michigan (the facility).

23. The facility constitutes a major source within the meaning of Section 501(2) of the Act, 42 U.S.C. § 7661(2), and 40 C.F.R. § 70.2, because it emits or has the potential to emit more than 100 tons per year each of carbon monoxide, nitrogen oxides, and sulfur dioxide.

24. Respondent violated Condition II.5 of Table F-1.1 of its Title V permit by exceeding the petroleum coke charge rate limit from May 31, 2006 through June 4, 2006 for Boiler No. 1 (EUBOILER01), and from May 31, 2006 through June 4, 2006, except June 1, 2006, for Boiler No. 2 (EUBOILER02).

25. Respondent violated Condition III.B.2 and/or III.B.3 of Table E-1.1 of its Title V permit by failing to observe and/or make record of the observation of the VE from the lime-handling baghouse stack at least once each time the silo was filled on the following dates: 2/1/04, 6/6/04, and 10/11/05.

26. Respondent violated Conditions III.B.2 and/or III.B.3 of Table E-1.2 of its Title V permit by failing to observe and/or make a record of the observation of the VE from the ash-unloading baghouse stack at least once each day that the ash-unloading system was operating on

the following dates: 2/1/04, 6/6/04, and 10/11/05.

27. Respondent violated Conditions III.B.2 and/or III.B.3 of Table F-1.2 of its Title V permit by failing to observe and/or make a record of the observation of the VE from the wood-handling baghouse stack at least once each day that the wood-handling system was operating on the following dates: 1/29/04, 2/5/04, 2/6/04, 2/11/04, 2/18/04, 3/4/04, 4/8/04, 5/29/04, 7/7/04, 3/13/05, 7/9/05, 8/15/05, 9/27/05, 10/2/05, 10/19/05, 1/11/06, 3/5/06, 4/2/06, 4/30/06, and 5/17/06.

Civil Penalty

28. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, Respondent's cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$24,500.

29. Within 30 days after the effective date of this CAFO, Respondent must pay a \$24,500 civil penalty by one of the following options:

- a. Sending via U.S. Postal Service mail a cashier's or certified check payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note the case name, docket number of this CAFO, and the billing document number.

- b. Sending via a carrier that will not deliver to P.O. Boxes (*e.g.* express carrier) a cashier's or certified check payable to the "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the case name, docket number of this CAFO, and the billing document number.

- c. Sending via electronic funds transfer payable to the "Treasurer, United States of America," to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the case name, the docket number of this CAFO and the billing document number.

30. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604;

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604; and

Eaton R. Weiler, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

31. This civil penalty is not deductible for federal tax purposes.

32. If Respondent does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

33. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

General Provisions

34. This CAFO resolves only Respondent's liability for federal civil penalties for the

violations alleged in this CAFO.

35. The CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

36. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 34, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

37. Respondent certifies that it is complying fully with its Title V permit.

38. This CAFO constitutes an "enforcement response" as that term is used in EPA's *Clean Air Act Stationary Source Civil Penalty Policy* to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

39. The terms of this CAFO bind Respondent, its successors, and assigns.

40. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

41. Each party agrees to bear its own costs and attorneys' fees in this action.

42. This CAFO constitutes the entire agreement between the parties. Payment of the penalty by Respondent within 30 days of the effective date of this CAFO will fulfill all requirements of this CAFO.

TES Filer City Station LP, Respondent

4/15/08
Date

J. Scott Wing
J. Scott Wing,
Authorized Representative and General Manager
TES Filer City Station LP

United States Environmental Protection Agency, Complainant

4/24/08
Date

Cheryl L. Newton FOR
Cheryl L. Newton, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of:

TES Filer City Station LP

Docket No.

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9/29/08
Date

Walter W. Kovalich
Mary A. Gade
Regional Administrator *for*
U.S. Environmental Protection
Agency, Region 5

In the Matter of TES Filer City Station
Docket No: CAA-05-2008-0016

CERTIFICATE OF FILING AND MAILING

I, Betty Williams, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-05-2008-0016 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and that I mailed by Certified Mail, Return Receipt Requested, to TES Filer City Station Corporation's Counsel by placing it in the custody of the United States Postal Service addressed as follows:

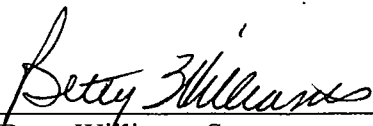
Michelle A. Gale
Dykema Gossett PLLC
10 South Wacker Drive
Suite 2300
Chicago, Illinois 60606

I also certify that a copy of the CAFO was sent by First Class Mail to:

Janis Denman, District Supervisor, Cadillac District
Michigan Department of Environmental Quality
120 W Chapin Street
Cadillac, Michigan 49601-2158

Tom Hess, Enforcement Unit Supervisor
Michigan Department of Environmental Quality
P.O. Box 30260
Lansing, Michigan 48909

on the 30th Day of April 2008


Betty Williams, Secretary
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0186 1481

RECEIVED
REGIONAL HEARING CLERK
US EPA REGION V
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